

CENTER FOR DISABILITY ACCESS
Ray Ballister, Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jose Estrada,

Plaintiff,

v.

South Street Property, LLC, a
California Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Jose Estrada complains of Defendants South Street Property, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He drives a van with an electric ramp and uses portable hand controls.

2. Defendant South Street Property, LLC owned the real property located

1 at or about 5674 Cherry Ave., Long Beach, California, in December 2016.

2 3. Defendant South Street Property, LLC owns the real property located at
3 or about 5674 Cherry Ave., Long Beach, California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for the
10 events herein alleged, or is a necessary party for obtaining appropriate relief.
11 Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 5. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to Leyva Recycling in December 2016 to turn in some

1 recyclables.

2 9. Leyva Recycling is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 10. Parking spaces are one of the facilities, privileges and advantages
5 offered by Defendants to patrons of Leyva Recycling.

6 11. However, there were no parking spaces marked and reserved for
7 persons with disabilities during plaintiff's visit.

8 12. Currently, there is not a single parking space marked and reserved for
9 persons with disabilities.

10 13. Transaction counters are another one of the facilities, privileges and
11 advantages offered by Defendants to patrons of Leyva Recycling.

12 14. The transaction counter at Leyva Recycling was more than 36 inches in
13 height.

14 15. There was no lowered, 36-inch or lower portion of the transaction
15 counter at Leyva Recycling for use by persons with disabilities.

16 16. Currently, the transaction counter at Leyva Recycling is more than 36
17 inches in height.

18 17. There is no lowered, 36-inch or lower portion of the transaction counter
19 at Leyva Recycling for use by persons with disabilities.

20 18. Intercoms are also one of the facilities, privileges and advantages
21 offered by Defendants to patrons of Leyva Recycling.

22 19. At the transaction counter of Leyva Recycling, there was a round
23 intercom to be used as a speaker to talk to the cashier of the counter. However,
24 this intercom was mounted more than 54 inches above the ground level and
25 was not effectively useable by persons with disabilities.

26 20. Currently, at the transaction counter of Leyva Recycling, there is a
27 round intercom to be used as a speaker to talk to the cashier of the counter.
28 However, this intercom is mounted more than 54 inches above the ground

1 level and is not effectively useable by persons with disabilities.

2 21. Plaintiff personally encountered these barriers.

3 22. This inaccessible condition denied the plaintiff full and equal access and
4 caused him difficulty and frustration.

5 23. Plaintiff would like to return and patronize Leyva Recycling but will be
6 deterred from visiting until the Defendants cure the violations.

7 24. The Defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 25. The violations identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 26. Plaintiff is and has been deterred from returning and patronizing Leyva
17 Recycling because of his knowledge of the illegal barriers that exist. Plaintiff
18 will, nonetheless, return to assess ongoing compliance with the ADA and will
19 return to patronize Leyva Recycling as a customer once the barriers are
20 removed.

21 27. Given the obvious and blatant violation, the plaintiff alleges, on
22 information and belief, that there are other violations and barriers on the site
23 that relate to his disability. Plaintiff will amend the complaint, to provide
24 proper notice regarding the scope of this lawsuit, once he conducts a site
25 inspection. However, please be on notice that the plaintiff seeks to have all
26 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
27 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
28 he can sue to have all barriers that relate to his disability removed regardless of

whether he personally encountered them).

28. Additionally, on information and belief, the plaintiff alleges that the failure to remove these barriers was intentional because: (1) these particular barriers are intuitive and obvious; (2) the defendants exercised control and dominion over the conditions at this location and, therefore, the lack of accessible facilities was not an “accident” because had the defendants intended any other configuration, they had the means and ability to make the change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

29. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

30. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
2 Appendix "D."

3 c. A failure to make alterations in such a manner that, to the
4 maximum extent feasible, the altered portions of the facility are
5 readily accessible to and usable by individuals with disabilities,
6 including individuals who use wheelchairs or to ensure that, to the
7 maximum extent feasible, the path of travel to the altered area and
8 the bathrooms, telephones, and drinking fountains serving the
9 altered area, are readily accessible to and usable by individuals
10 with disabilities. 42 U.S.C. § 12183(a)(2).

11 31. Any business that provides parking spaces must provide a sufficient
12 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
13 Standards § 208. The required minimum number of handicap parking spaces
14 is dependent on the total number of parking spaces available. *Id.* According to
15 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1
16 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of
17 those accessible parking spaces, but not less than 1, must be a "van" accessible
18 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §
19 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must
20 have at least 1 accessible space and 1 of them must be van accessible. 2010
21 Standards § 208.2 & § 208.2.4.

22 32. Here, the failure to provide accessible parking spaces is a violation of the
23 ADA.

24 33. In areas used for transactions where counters have cash registers and
25 are provided for sales or distribution of goods or services to the public, at least
26 one of each type shall have a portion of the counter which is at least 36 inches
27 in length with a maximum height of 36 inches above the floor. 1991 Standards
28 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service

1 counter is a parallel approach, such as in this case, there must be a portion of
2 the sales counter that is no higher than 36 inches above the floor and 36 inches
3 in width and must extend the same depth as the rest of the sales or service
4 counter top. 2010 Standards § 904.4 & 904.4.1.

5 34. Here, no such accessible transaction counter or a lowered, 36 inch
6 counter has been provided in violation of the ADA.

7 35. Under the ADA, the highest operable part of controls, dispensers,
8 receptacles and other operable equipment must be placed so that it is no higher
9 than 48 inches above the ground if only a forward approach is provided or 54
10 inches if a parallel approach is possible. 1991 Standards §§ 4.27.3, 4.25, 4.26;
11 2010 Standards 205; 308, 309.

12 36. The failure to ensure that these height/reach requirements are met is a
13 violation of the law.

14 37. A public accommodation must maintain in operable working condition
15 those features of its facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 38. Here, the failure to ensure that the accessible facilities were available
18 and ready to be used by the plaintiff is a violation of the law.

19 39. Given its location and options, plaintiff will continue to desire to
20 patronize Leyva Recycling but he has been and will continue to be
21 discriminated against due to the lack of accessible facilities and, therefore,
22 seeks injunctive relief to remove the barriers.

23
24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
25 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
26 51-53)

27 40. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 41. Because the defendants violated the plaintiffs' rights under the ADA,
3 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
4 Code § 51(f), 52(a).)

5 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
6 discomfort or embarrassment for the plaintiffs, the defendants are also each
7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
8 (c).)

9
10 **PRAYER:**

11 Wherefore, Plaintiff prays that this court award damages and provide
12 relief as follows:

13 1. For injunctive relief, compelling defendants to comply with the
14 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
15 Plaintiff is not invoking section 55 of the California Civil Code and is not
16 seeking injunctive relief under the Disabled Persons Act at all.

17 2. Damages under the Unruh Civil Rights Act which damages provide for
18 actual damages and a statutory minimum of \$4,000.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

21
22 Dated: January 9, 2017

CENTER FOR DISABILITY ACCESS

23
24 By: 
25 Russell Handy, Esq.
26 Attorneys for Plaintiff
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